

that the product *as claimed* can be made with a materially different process (i.e., from that claimed).

The Examiner has stated:

In this case when optical switches permit optically coupling any path and in order to create optical path within a channel planar layer including the planar layer with the channel or removing material from the planar layer can accomplish by chemically etching rather by mechanical cutting or laser cutting.

(06/14/2005 Restriction Requirement, p. 2)

The Examiner has based the Restriction Requirement on the fact that the optical path of the product made can be created by chemical etching, mechanical cutting, laser cutting, etc. Applicant agrees that the optical path may be formed by any number of techniques. *Applicant submits, however, that no limitation regarding the manner in which the optical path is formed is found in either claim 1 (Group I) or claim 20 (Group II).* Thus the fact that the optical paths may be formed by different techniques is irrelevant with respect to either of claims 1 or 20.

Claims 1 and 20 read as follows:

1. A method of fabricating an optical cross connect, comprising:
 - a) *providing a first board having m optical path(s);*
 - b) *providing a second board having n of optical path(s); and*
 - c) *providing an optical switch array comprising a plurality of optical switches, wherein the optical switches permit optically coupling any optical path of the first board with any optical path of the second board.*

(Claim 1)(*emphasis added*)

20. An optical cross connect apparatus, comprising:
 - a first planar layer comprising m optical path(s);*
 - a second planar layer comprising n optical path(s); and*
 - an optical switch array comprising a plurality of optical switches, wherein the optical switches permit optically coupling any optical path of the first planar layer with any optical path of the second planar layer.*

(Claim 20)(*emphasis added*)

Thus neither of the independent claims 1 of Group I or 20 of Group II is limited to a specific manner of forming the optical path. The Examiner therefore cannot distinguish the claims based on different methods of forming the optical paths because no such limitation is currently present in claims 1 or 20.

Applicant submits that the Examiner has not demonstrated a process materially different *from that claimed* for making the product. The Examiner has similarly failed to show that the product *as claimed* can be made by another and materially different apparatus. Accordingly, applicant submits that the Examiner's restriction of claims 1-30 is improper.

If there are any issues that can be resolved by telephone conference, the Examiner is respectfully requested to contact the undersigned at (512) 858-9910. Please note that an Information Disclosure Statement accompanies this Response.

Respectfully submitted,

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